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Curtis Holbrook Lindley

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COMMANDING figures in history increase in stature and their remarkable qualities become emphasized as a result of traditions and glorification with which time surrounds them. And yet it does not seem that this reason alone accounts for the absence of great outstanding characters among the lawyers of today. Where are the Websters and the Choates and the Pinckneys of our contemporary bar? Without doubt their absence is due, not so much to the lack of innate genius and creative ability in those among us, as to the leveling effects of modern life and conditions. The stupendous number of decisions which the judicial mill is daily grinding out, the intense competition resulting from increasing density of population, the strife to accumulate material wealth, all have a tendency to stifle and restrict within narrow limits the full and free expression of genius. It is all the more remarkable, therefore, when a lawyer nowadays emerges head and shoulders above his fellows in the profession and becomes a source of inspiration not only to those who come after but also to those who live immediately about him. Such a man and lawyer was Curtis Holbrook Lindley.

Judge Lindley's ancestors came to this country from England about the year 1684, and settled in Connecticut, while his mother's family, which was of Scotch origin, chose Virginia as a place of residence. Representatives of both sides of the house fought in the war for American Independence. Charles Lindley, his father, a graduate of the Yale Law School, reached California in 1849, where he engaged in the practice of the law, subsequently becoming Judge of Yuba County.

Judge Lindley was born in Marysville, California, December 14, 1850. Marysville was at that time one of the most important mining centers in the state, for a large number of the "gold-seekers" who rushed into the Sierra passed through Marysville.

Judge Lindley was not only a pioneer by birth, but he grew up in the stimulating atmosphere immediately following the "days of '49." Because of the early loss of his mother a considerable portion of his boyhood was spent attending military academies. When only sixteen years of age he managed, because of his size, to enlist in the regular army, but his father secured his release before he had served the full term of his enlistment. He attended Santa Clara College 1863-5, the San Francisco High School 1865-6, and the University of California 1870-2. He was attending the University at the time of the organization of military instruction there, and because of his military experience became at once the ranking captain of the University cadets, and was the first commissioned officer under Professor Soule, who was in charge of this branch of University training.¹

His father, Charles Lindley,² practiced law in many of the pioneer mining camps, having spent considerable time in Virginia City in the 60's during the thrilling Comstock days. Here again his son became imbued with the spirit of adventure and was brought in close contact with the stirring scenes of the great mining excitement which underlies the development of the West. In Virginia City he lived next door to Mark Twain and for a time attended school with Bret Harte.

A few years later young Lindley, then only seventeen years of age, started out with companions on a prospecting expedition in Nevada. In the course of their wanderings they reached the Reville Mining District, and being attracted by conspicuous copper stains on the surface, located the "Bluejay" mining claim. While engaged in exploration work a rival locator, a much older man, appeared on the scene and challenged their right to the ground. They mutually agreed to submit the matter to a board of arbitrators, each side selecting two. Young Lindley was chosen by his companions to present and argue their side of the case. The introduction of evidence and the argument lasted far into the night. The arbitrators failed to agree, each two remaining loyal to their respective sides. Lindley and his associates later lost interest in the enterprise, but the incident was prophetic, for it was the first lawsuit in which he appeared as an advocate, and it

¹ He received the degree LL.D. from the University of Santa Clara in 1912, and from the University of California in 1917.

² Judge Lindley's son, Curtis Lindley, Jr., informs me that Charles Lindley was largely instrumental in the passage of legislation providing for military training and co-education at the University of California.

was at a time when he had neither studied law nor had the slightest intention of later specializing on mining law.

Another mining incident in his career is also noteworthy. While he was still under age, the state legislature of Nevada passed a special act making his conveyance of an interest in a mining claim legal.

He ran a stationary engine on the Comstock and just before commencing the practice of the law was stationary engineer at the Union Works. In later life he was firmly of the opinion that every lawyer should, as a part of his education, take some sort of engineering course. At the age of fifty, in order better to fit himself for the practice of mining law, he took a correspondence course in mining engineering.

He was admitted to practice in May, 1872, and the same year was appointed secretary of the California Code Commission, of which his father was a member. He was married to Elizabeth Mendenhall in June following his admission to practice. After practicing law for a short time in San José he entered the offices of E. B. Mastick and J. W. Mastick, who were prominent San Francisco attorneys. Frank Otis, U. C. '73, was also in the same office. They were allowed to attend to small matters that came into the office on their own account, and these perquisites were commonly referred to by Lindley as "cold turkey". His copper-plate handwriting resulted in a large share of the engrossing of legal documents falling to his lot, for those were pre-typewriter days. He later opened an office in Livermore and drafted a charter for the town. Like many a struggling attorney he had to economize, and he and his wife lived in the rear of his office, with only a curtain between office and living quarters. He moved to Stockton in 1882 and became city attorney. In 1884 he was appointed superior judge of Amador County by Governor Stoneman, and served an unexpired term (1884-1885). He failed to secure the nomination of his party to succeed himself, and for two years engaged in the practice of the law in Jackson, Amador County. Judge Lindley has often said that his failure to succeed himself as judge was one of the most fortunate happenings in his life. It marked the turning-point in his career. Instead of brooding over his defeat, it spurred him on to fame and fortune. If he had been re-elected he would probably have spent the better portion of his life on the county bench. He later removed to San Fran-

cisco and became a member of the firm of King, Rodgers & Lindley.³

In the fall of 1890 he formed a law partnership with Henry Eickhoff, and they were associated under the firm name of Lindley & Eickhoff until his death. At that time they had remained associated longer than any other firm then existing in San Francisco.

While on the bench in Amador County, Judge Lindley had occasion to decide several mining cases. With his customary thoroughness and methodical habit he made many notes on principles of mining law. After he left the bench he began to specialize on this branch of the law, and the material he had accumulated served him in good stead. He added to his annotations until he finally conceived the idea of publishing a treatise on the subject. "Lindley on Mines"⁴ was the result and is the enduring monument to his genius. It is almost inconceivable that a work of the high order of "Lindley on Mines", giving every evidence of countless hours of painstaking research and mechanical labor, combined with other countless hours of contemplation and deliberation essential to the presentation of the finished and weighty conclusions on the complex subjects there discussed, could be produced by a professional man in active practice. And yet this is the herculean feat that Judge Lindley accomplished. Those who were in his office during the period preceding the appearance of the first edition tell me that there was scarcely a night or a holiday which did not find the Judge in his law library industriously laboring with notes or text. When he had completed the discussion of some particular question he would read it aloud with evident satisfaction, and call on his assistants for comment and suggestion. He was quick to recognize valid criticism and modify his conclusions accordingly.

The title page of "Lindley on Mines" bears the following quotation:

"I hold every man a debtor to his profession; from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be a help and ornament thereto."

This was typical of the author's idealism, and he faithfully lived up to this precept.

³ Arthur Rodgers was for many years a regent of the University of California.

⁴ The complete title of the work is "A Treatise on the American Law Relating to Mines and Mineral Lands within the Public Land States and Territories and governing the Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain." The first edition appeared in 1897, a second edition in 1903, and the third and last edition in 1914.

At the time the first edition of the work appeared in 1897 there was no comprehensive treatise on the subject of mining law. Springing up "overnight" as it were, as a result of the immediate necessities of the hour, and founded on the rules and customs and regulations of the miners themselves, the law governing mining on the public domain was unique. Later codified by the Acts of Congress of 1866, 1870 and 1872, it presented many complex problems for determination by the courts. This judicial interpretation was a matter of gradual growth. No one in the early days of this period of development of mining law principles could possibly have anticipated these problems or their solution. The few works that had appeared were little more than digests of the statutes and the few cases the courts had then decided.⁵ They could hardly be dignified with the title of treatises.

Judge Lindley recognized that the time was ripe for a more systematic and philosophical treatment of the subject, and seizing the opportunity, he produced a work that stands out as a classic, not only in its special field, but also in the literature of American jurisprudence. Not content with presenting merely the legal mining problems in this country, he conducted an exhaustive research into the mining laws of other countries and other times. The introductory chapter of his treatise contains the finest presentation of "Comparative Mining Jurisprudence" in the English language.⁶

He, of course, covered the entire field of American mining law, presenting the main features of the mining jurisprudence prevailing in the original states and those of the Middle West. His treatment of the mining law of the public domain is most illuminating and thorough. Judge Lindley, as previously noted, practically grew up with this law, and his knowledge of its problems and his appreciation of its spirit and development was unusually sympathetic and complete.

As soon as the work appeared its extraordinary merit was recognized. It quickly took rank as the authoritative text on the

⁵ "Mining Claims and Water Rights", (1869) by Yale was the pioneer work. Copp's "U. S. Mineral Lands" appeared in various editions, as was also the case with Morrison's "Mining Rights", Weeks on Mineral Lands (1877 and 1880), Wade's "American Mining Laws" (1889) and Sickel's "Mining Laws and Decisions" (1881) had also appeared.

⁶ An interesting incident in this connection is worth noting. Some years ago, I had requested my sister-in-law, then in London, to secure all the English books on mining law that were available. Calling at one of the leading dealers she was shown "Lindley on Mines" and told that it was the best treatise on the subject in the English language. The dealer was quite impressed when she said that she need not purchase the work because her brother-in-law was an associate of Judge Lindley's.

subject. There are few mining decisions of importance that do not cite it. The justices of the Supreme Court of the United States have on many occasions shown their high approval by quoting extensively from it in their opinions.

Three editions have now appeared, and it was a source of great pride to Judge Lindley that in his later editions he was repeatedly able to note under section after section that either its language or its announcement of principle had been endorsed by various courts. This was particularly gratifying and indicative of the high character of the work, for when the first edition appeared, many of the problems there discussed were still moot and open to debate. Yet Judge Lindley had never hesitated to express freely and fairly his own individual views, which is not the case with many a more cautious author, and when an able writer has the courage to do so it adds immeasurably to the value of the work. In after years while engaged in the trial of mining cases, opposing counsel would often cite some passage from "Lindley on Mines". Judge Lindley would frequently remark in a humorous way that he had been guilty of a "literary indiscretion", and that his opponents always quoted everything they could find in his work in support of their contentions, but never made any reference to the many passages that were authority against them. He was such a stickler for the proprieties that he would never quote from or refer to his own book, and never allowed it to be brought into the court-room, even by his associates; when he was present.

Probably the ablest and most sympathetic review of "Lindley on Mines" was written by the late Rossiter W. Raymond, a life-long friend of Judge Lindley's, and who as a lawyer, an eminent mining engineer and a author on similar subjects, was perhaps best qualified to make an accurate appraisal of the real value of the work.⁷

Dr. Raymond said:

"It is seventeen years since the first edition of Mr. Lindley's work made its appearance, taking rank at once as the leading authority on the subject of which it treated. At that time, the U. S. mineral land law, substantially in its present form, had been in operation twenty-five years, yet only a few of the many difficult questions arising under it had been clearly and finally settled by the U. S. Supreme Court, and a large part of the book was devoted to the discussion of such questions, in the light of judicial opinions not complete or conclusive,

⁷ This review was of the third edition and appeared in the "Engineering and Mining Journal" of April 18, 1914.

obiter dicta, and, above all, the author's own study of the text and principles of the statute, and his critical sense of fitness and justice in their application. It was the candor, lucidity and forceful suggestiveness of these passages which caused the work to be recognized immediately and on all sides as much more than a laborious compilation. It was a helpful summary and guide, alike intelligible to laymen and instructive to lawyers and judges. . . .

"He spent eight years in the preparation of a third edition—truly an imposing magnum opus—which will be, no doubt, the monument of his fame. He cannot perform the colossal task again; and he may well rest content with this achievement. . . . His most important service has been connected with the intricacies and difficulties of the 'apex-law', that is, the law regulating the possessory occupation and the sale of public mineral lands containing ore-deposits classed as lodes, and defining the nature of title to such lands and deposits conveyed by the deed of the United States."

Tribute to the excellence of the work was also paid by a noted mining engineer, Horace V. Winchell, who said:

"To the lawyer, the mining engineer or economic geologist, to the mine owner or superintendent who desires to have in his possession an authoritative book of reference to which he can go for up-to-date information as to any vexed point on the mining laws of our country 'Lindley on Mines' is indispensable. The thanks and appreciation of all these classes of men are due the author for the painstaking labor and intelligent interest with which the masterly work has been prepared."⁸

In this respect "Lindley on Mines" is unique. There is no other legal text to my knowledge which is so extensively consulted and owned by those outside of the legal profession.

Many remarkable legal treatises have been written, classic in elegance of diction as well as scholarly in exposition of principles. Few eminent authors, however, have shown conspicuous ability in the actual conduct of cases in court. The calm, impartial temperament and infinite patience essential to the writing of a truly great text book is seldom combined with striking forensic ability. In this respect Judge Lindley was a noteworthy exception. Not only was he recognized as an author of an exceptional work, but for many years prior to his death he was an acknowledged leader at the bar. In his own specialty, mining law, he was admittedly pre-eminent, but his remarkable versatility became manifest in the handling of other cases as well.

⁸ Economic Geology, vol. IX, No. 6, Sept., 1914.

His mining practice took him into practically all of the mining states of the West as well as Canada, Mexico and England. He became a familiar figure before the Supreme Court of the United States. He was at his best in the trial of mining cases involving complex and novel extralateral right problems. Having been closely associated with him in all of the litigation of this character in recent years, I can appreciate the reasons for his success. He was never content to rely upon his exceptional familiarity with general mining problems nor his native ability, but in each case he must needs go to the very bottom and know all there was to know about both law and facts. The briefs which he prepared in anticipation of a trial were exhaustive, and though not used in many cases, were always prepared to meet the possible emergency.

To attempt to enumerate the leading cases in which he was engaged would mean to include most of the important mining cases of recent years. The Providence⁹-Champion¹⁰-North Star¹¹-Pennsylvania¹² litigation of the Grass Valley and Nevada City mining districts, the Bunker Hill and Sullivan¹³ litigation of the Coeur d'Alenes, Idaho, covering many years and involving many cases in which numerous new principles of mining law were decided; the Argonaut-Kennedy¹⁴ and Central Eureka¹⁵ litigation of Amador County, the more recent Utah Apex-Utah Consolidated¹⁶ suits in Utah, were among the important cases of his career. In the earlier part of his professional career, Judge Lindley accomplished a splendid piece of work in the partitioning of the San Pablo

⁹ Walrath v. Champion Min. Co. (1894) 63 Fed. 552, (1896) 72 Fed. 978, 19 C. C. A. 323 (1898) 171 U. S. 293, 43 L. Ed. 170, 18 Sup. Ct. Rep. 909.

¹⁰ Cons. Wyoming Min. Co. v. Champion Min. Co. (1894) 63 Fed. 540.

¹¹ Carson City Min. Co. v. North Star Min. Co. (1896) 73 Fed. 597, (1897) 83 Fed. 658, 28 C. C. A. 333 (1898) 171 U. S. 687, 18 Sup. Ct. Rep. 940.

¹² Pennsylvania Consolidated Min. Co. v. Grass Valley Exp. Co. (1902) 117 Fed. 509.

¹³ Bunker Hill etc. Min. Co. v. Empire State etc. Co. (1901) 106 Fed. 471, (1900) 108 Fed. 189, (1901) 109 Fed. 538, 48 C. C. A. 665, (1903) 134 Fed. 268; Empire State etc. Co. v. Bunker Hill etc. Co. (1902) 114 Fed. 417, 420, 52 C. C. A. 219, 222, (1903) 121 Fed. 973, 58 C. C. A. 311, (1904) 131 Fed. 591, 66 C. C. A. 99, (1906) 200 U. S. 613, 50 L. Ed. 620, 26 Sup. Ct. Rep. 753; Last Chance Min. Co. v. Bunker Hill, etc. Co. (1904) 131 Fed. 579, 66 C. C. A. 299, (1906) 200 U. S. 617.

¹⁴ Argonaut Min. Co. v. Kennedy Min. Co. (1900) 131 Cal. 15, 63 Pac. 148; Kennedy Min. Co. v. Argonaut Min. Co. (1903) 189 U. S. 1, 47 L. Ed. 685, 23 Sup. Ct. Rep. 501.

¹⁵ Central Eureka Min. Co. v. East Central Min. Co. (1905) 146 Cal. 147, 79 Pac. 834, 9 L. R. A. (N. S.) 940 and before the Supreme Court, (1907) 204 U. S. 266, 51 L. Ed. 476, 27 Sup. Ct. Rep. 258.

¹⁶ Tried in the Federal court. Decisions not yet reported.

Grant, on which the City of Richmond is now situated. This partition involved most intricate problems, involving the law of Spanish Grants and the equitable division of property where the grantors had conveyed far more in acreage than they were entitled to convey.

One of the later cases, not involving his specialty, in which Judge Lindley was engaged, was the organization of the Marin Municipal Water District. The handling of this case again illustrates Judge Lindley's ability in dealing with novel problems. This district was organized under new and untried legislation, and many questions of constitutional law were raised, but the Judge met them all successfully.¹⁷

Prior to the San Francisco fire of 1906 Judge Lindley had been working on the stupendous task of preparing a work on the "Law of Waters" similar to his work on mines. He had spent eight years of laborious effort in gathering notes and accumulating material. All of this data was utterly destroyed and the Judge never had the heart to undertake the labor anew, though one of the government bureaus offered to furnish him with the necessary clerical assistance and publish it without charge.

If I were to sum up the elements which contributed to Judge Lindley's success as a lawyer, I would place them in the following order; exceptional native ability, then incredible industry, and finally undeviating integrity.

I have never known a lawyer who was more punctilious on questions of legal ethics. He would never take an unfair advantage of an opponent and never tolerate the slightest suggestion of questionable tactics on his own side of the case. In trying cases he ignored technicalities and directed his efforts to solving the fundamental issues.

Becoming interested in the work of the San Francisco Bar Association, he was elected president, which office he filled for four years (January 8, 1909, to January 10, 1913). Members of the association will recall the inspiration of these years, the series of lectures on live legal topics which he organized, and the encouragement and assistance which he gave to the junior members of the bar. A little later he assisted in the organization of the state

¹⁷ In re Application Marin Water Dist. (1915) 6 Cal. R. R. Com. Dec. 507, 12 id. 532, 692; Marin Water, etc. Co. v. Railroad Commission (1916) 171 Cal. 706, 154 Pac. 864, Ann. Cas. 1917C 114; Marin Municipal Water Dist. v. Dolge (1916) 172 Cal. 724, 158 Pac. 187; Marin Municipal Water Dist. v. Marin Water, etc. Co. (1918) 178 Cal. 308, 173 Pac. 469; Marin Municipal Water Dist. v. North Coast, etc. Co. (1918) 178 Cal. 324, 173 Pac. 473.

Bar Association and served as its first president, (1909-1910) lending his wonderful personality and ability to the establishment of that institution on a firm foundation.

As a result of his work in these bar associations he became intensely interested in the position which the lawyer occupies in the community. He acquired a rare library of books bearing on this subject, not hesitating to refresh his classical learning and to carry on his research by consulting Latin and Greek authors in the original. He had amassed a valuable collection of material relating to the emergence of the lawyer from ancient institutions, particularly the ecclesiastical. With the assistance of his daughter, he had been preparing a series of lectures on this fascinating subject "The Lawyer in Ancient Times," which he was intending to deliver at the Law School of the University of California and later perpetuate in a published volume, but ill health forbade. He also accumulated a remarkable secular library at his home, which reflects his great diversity of interests—sociological, governmental and scientific problems occupying his spare moments.

But Judge Lindley was not content merely to be an eminent text-writer and a conceded leader at the bar. We have noted that one of his cardinal principles was recognition of the duty each lawyer owes to his profession. He did not stop there. He also recognized a higher and more important civic duty and added to his manifold labors as an author and lawyer more than his share of service and devotion to the commonwealth. There are few men who have served their country as unselfishly and as well. Municipality, state and nation all owe him undying gratitude.

In politics Judge Lindley was a progressive. While his main allegiance was to the Democratic Party, there were many occasions when he supported Republican candidates. He placed the welfare and best interest of the community above any party.

At a dinner given in San Francisco, May 16, 1911, by the Princeton, Yale and Harvard clubs in honor of President Wilson, Judge Lindley concluded his remarks as follows:

"This message from the progressive men of California of all past political creeds to the progressive men of New Jersey, whatever may have been their past party affiliation. We are fighting under the same banner and for the same righteous cause—reform in our civic methods and the raising of the ethical standards of American citizenship".

Convinced that the municipal government of San Francisco needed betterment, he was one of the leaders in forming in 1911

the "Municipal Conference", a non-partizan organization. Through the efforts of this Conference, a complete change in city administration took place. Judge Lindley also devoted himself without compensation to the securing of a municipal water supply for San Francisco, and it was in large part due to his guiding hand that the plans of the municipality were carried out.

He was a strong supporter of Hiram Johnson when the latter ran for Governor of California.

He was one of the directors of the Panama-Pacific International Exposition, and in the early conduct of its affairs before it had become an assured success, he proved to be the "wheel horse", in whom its financial backers had absolute confidence, and whose advice and guidance carried it through the critical period.

A few years ago he was appointed park commissioner of San Francisco. A short time after his appointment he was made president of the commission. This was practically the only public office which he held in his later life and he would not have accepted it were it not an honorary position, for like all his other public work, he could not bring himself to the idea of receiving compensation for public work which he felt it was his obligation to perform. On the Park Commission he has been referred to as a "tower of strength".

He was frequently called on to address various clubs and organizations, the subject of many of these addresses being important public policies. At a banquet given in 1911 in San Francisco by the Commonwealth Club in honor of former President Roosevelt, he delivered an address on "Conservation With Special Reference to the Doubtful Zone between National and State Authority". Roosevelt was so delighted with the address that on its conclusion he immediately left his seat, and coming over to the Judge congratulated him and demanded that the Judge then and there turn over to him the typewritten text of the address. This address concluded with the following paragraph:

"In other times and in other nations the national domain—the folk-land—the hinterland, has been the plaything of tyrants. In the American commonwealth it has fed the appetite of greed; has been preyed upon by the pillaging land-grabber and annexed by the fraudulent land pirate. That there still remains enough upon which to focalize a national sentiment, and around which to build a national hope is due solely to those men who had the great foresight to take the initiative, and the magnificent courage to deliver the message. Among these patriotic citizens the name of him, who like

Abou Ben Adhem's (may his tribe increase) leads all the rest, is that of the distinguished guest of the evening."

But the greatest opportunity for rendering public service came with the entry of the United States into the world war. Judge Lindley had many years before delivered lectures on mining law at Stanford and at the University of California, at which latter institution he had been made an honorary professor of the law of mines and water. Mining engineers attended these courses at both universities. Judge Lindley took a special interest in these younger men and made many lasting friendships. Among his Stanford listeners was Herbert C. Hoover. Shortly after Mr. Hoover's graduation from college, Judge Lindley aided in securing him a professional engagement which opened the way to fame and fortune. Before the United States had entered the war, Mr. Hoover, who had done such an incredible amount of good in Europe, felt that his work there was largely accomplished and intimated to Judge Lindley that he was ready and anxious to serve his own country. Judge Lindley encouraged him in this desire and aided in bringing Mr. Hoover in touch with the administration leaders at Washington. Immediately upon Mr. Hoover's appointment at the head of the Food Administration he called upon Judge Lindley to assist him in organizing the legal department, and Judge Lindley joined the ranks of the "dollar-a-year" workers. He left his practice at the climax of his professional career and at a time when his earning power was greatest. I shall always remember the boyish enthusiasm with which he put his professional house in order and left for Washington. Only those who were in close contact with the Judge can realize how hard he labored and what wonderful results he accomplished while there. He organized the legal department of the Food Administration, having Robert Taft, a son of ex-President Taft, as his principal assistant. Standing out from the infinite detail and perplexing problems of this organization which had sprung up on a moment's notice, was the creation of the United States Grain Corporation. Judge Lindley had aided in drafting the legislation which clothed the Food Administration with the necessary power, and among those powers was the right to form a corporation for the purpose of controlling the grain production of the United States. Judge Lindley carefully drafted a proposed charter for this corporation and submitted it to President Wilson as a "tentative draft", expecting it to be returned for revision. It was a matter of considerable pride to the Judge to have the President

pen out the words "tentative draft" and without further delay sign the proclamation making the charter effective. It is enormously to Judge Lindley's credit that, leaving his special field of mining law, he was able to turn at once to the great problems of commercial law, constitutional questions and novel matters concerning which there was no precedent to guide the way, and that his judgment in such matters should have been so unerring, and eminently sound, as was amply demonstrated by the results.

The climate of Washington proved a severe drain on Judge Lindley's vitality, and at the end of the year he was forced to leave with his health badly impaired. With characteristic courage he gradually built up his health after his return to California and again engaged in practice.

He died "in the harness", as he had often expressed a desire to die. We had been engaged in the trial of a suit involving extralateral rights in Arizona. During the trial he had taken the leading part in the examination of witnesses and conduct of the case. The last day was a most trying one, because it involved cross-examination of the leading expert witnesses representing the opposing side. We had returned to the hotel about an hour after the conclusion of the trial, when he was stricken with the illness which resulted in his death five days later. His courage in facing death was characteristic. His desire to die "in the harness" had been granted, as was also his wish to return to his home and wife. Shortly before his death he remarked: "After an active life like mine what is there more to be desired than the peace that comes with eternal sleep". On November 20, 1920, there passed away not only a great lawyer and a great author, but also a great citizen. He will live hereafter as an inspiration to others and particularly to the young men of the University which he served so well.

Wm. E. Colby.

San Francisco, California.